

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Abigail Shuster	Team: Squad #15	CCRB Case #: 201604697	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 05/19/2016 4:24 AM	Location of Incident: 1353 Edward L. Grant Highway; en route to and inside of the 44th Precinct stationhouse	Precinct: 44	18 Mo. SOL 11/19/2017	EO SOL 11/19/2017	
Date/Time CV Reported Mon, 05/23/2016 6:00 PM	CV Reported At: Precinct	How CV Reported: In-person	Date/Time Received at CCRB Wed, 06/01/2016 10:59 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Luis Marte	24133	941288	044 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Justin Prieto	15603	933204	044 PCT
2. SGT Dunia Palacios	05307	940543	044 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Luis Marte	Discourtesy: In front of 1353 Edward L. Grant Highway in the Bronx, Police Officer Luis Marte spoke discourteously to § 87(2)(b)	
B.POM Luis Marte	Off. Language: In front of 1353 Edward L. Grant Highway in the Bronx, Police Officer Luis Marte made remarks to § 87(2)(b) based upon her gender.	
C.POM Luis Marte	Discourtesy: In front of 1353 Edward L. Grant Highway in the Bronx, Police Officer Luis Marte spoke discourteously to § 87(2)(b)	
D.POM Luis Marte	Abuse: In front of 1353 Edward L. Grant Highway in the Bronx, Police Officer Luis Marte threatened to arrest § 87(2)(b)	
E.POM Luis Marte	Abuse: In front of 1353 Edward L. Grant Highway in the Bronx, Police Officer Luis Marte threatened to arrest § 87(2)(b)	
F.POM Luis Marte	Abuse: En route to the 44th Precinct stationhouse, Police Officer Luis Marte threatened § 87(2)(b) with the use of force.	
G.POM Luis Marte	Force: Inside of the 44th Precinct stationhouse, Police Officer Luis Marte used physical force against § 87(2)(b)	

Case Summary

§ 87(2)(b) filed this complaint in person at the 44th Precinct on May 23, 2016, generating original IAB log number 16-18383. It was received at the CCRB on June 1, 2016.

On May 19, 2016, at approximately 4:24am, § 87(2)(b) was arrested by officers from the 44th Precinct for fighting outside of the Budda Lounge, an establishment located at 1353 Edward L. Grant Highway in the Bronx. Also arrested with § 87(2)(b) was § 87(2)(b) who was involved in the altercation. PO Luis Marte of the 44th Precinct allegedly told § 87(2)(b) “I don’t give a fuck,” in response to § 87(2)(b)’s denial that he had been fighting (**Allegation A**).

Also on scene was § 87(2)(b)’s girlfriend. PO Marte allegedly called § 87(2)(b) a “bird bitch,” and told her to “shut the fuck up” (**Allegation B** and **Allegation C**). PO Marte also told both § 87(2)(b) and § 87(2)(b) and § 87(2)(b)’s colleague) that if they did not leave, they would be arrested as well (**Allegation D** and **Allegation E**).

En route to the 44th Precinct stationhouse, PO Marte and § 87(2)(b) argued over the circumstances of the arrest, at which point PO Marte allegedly told § 87(2)(b) “When we get to the stationhouse, I’m going to fuck you up” (**Allegation F**).

At the 44th Precinct stationhouse, PO Marte and his partner, PO Justin Prieto of the 44th Precinct, took § 87(2)(b) directly to a back cell area in an effort to calm him down before introducing him to other prisoners in holding. After removing § 87(2)(b)’s handcuffs, PO Marte allegedly tripped § 87(2)(b) to the ground and punched him several times with a closed fist to the right side of § 87(2)(b)’s upper face and forehead (**Allegation G**).

§ 87(2)(b)

Video footage was obtained by IAB during their call-out investigation and provided to the CCRB, but the video has no audio and only captures some of the interactions between civilians prior to the officers’ arrival.

Mediation, Civil and Criminal Histories

- Due to § 87(2)(b)’s arrest and his injuries, this case was not eligible for mediation.
- A FOIL request was filed with the Office of the New York City Comptroller on August 26, 2016, to verify whether any notices of claim were filed. The results will be added to the case file upon receipt.
- § 87(2)(c)

Civilian and Officer CCRB Histories

- This is § 87(2)(b)’s first CCRB complaint (BR 2).

- PO Marte, during his 10-year tenure with the NYPD, has been the subject of five previous CCRB allegations involving four cases. No allegations were substantiated and no patterns relevant to this case were found.

Potential Issues

The force allegation discussed in Allegation G involved one subject officer and one witness officer. By all counts, no civilians had a visual of the area of the stationhouse in which the alleged force took place. Contact attempts were made to the other prisoners inside of the stationhouse at that time, and an unverified telephone statement was successfully obtained from one such individual, named § 87(2)(b) stated that though he heard sounds of fighting, he witnessed no part of the altercation (BR 13).

Findings and Recommendations

Allegation A – Discourtesy - In front of 1353 Edward L. Grant Highway in the Bronx, Police Officer Luis Marte spoke discourteously to § 87(2)(b)

§ 87(2)(b) alleged that, after informing PO Marte that he was in fact the victim of the other individuals' aggression, PO Marte responded, "I don't give a fuck"(BR 3).

§ 87(2)(b) who was in the direct vicinity during the incident, testified that PO § 87(2)(b) told § 87(2)(b) to "Shut the fuck up," or some similar statement (BR 4).

§ 87(2)(b) a colleague of § 87(2)(b)s, reported in an unverified telephone statement that PO Marte "said something" to § 87(2)(b) which sounded aggressive, but that she could not hear their exact conversation (BR 5).

When asked whether he made the alleged statement, PO Marte replied, "In referring to what?" He was then prompted by his legal representative to answer the investigator's question, at which time PO Marte testified that he did not recall having said the alleged statement. He testified that § 87(2)(b) was cursing at him throughout the incident and that § 87(2)(b) and § 87(2)(b) were additional irate and that there was a good amount of yelling back and forth (BR 6).

PO Prieto, PO Marte's partner, testified that he did not recall hearing PO Marte tell § 87(2)(b) to "shut the fuck up," or using any profanity toward anyone. He noted that there was a great deal of commotion on scene and that he could not recall the specifics of what anyone said (BR 7).

The three civilians on scene corroborated the claim that PO Marte used some version of the word "fuck" toward § 87(2)(b) PO Marte did not recall saying it, which is also noteworthy given that PO Marte explicitly denied making other discourteous remarks (see Allegation F), while he failed to recall whether or not he made the one under discussion.

It is undisputed that the scene involved heated exchanges between PO Marte and § 87(2)(b) as well as between PO Marte, § 87(2)(b) and § 87(2)(b) as will be discussed later in this report. Given these conditions, the corroboration between the civilians as to the alleged statement, and PO Marte and PO Prieto's own lack of recollection as to specifically whether or not PO Marte made this statement, § 87(2)(g)

Officers are to be courteous and respectful with members of the public. NYPD Patrol Guide 203-09 (BR 9).

§ 87(2)(g)

Allegation B – Offensive Language – In front of 1353 Edward L. Grant Highway in the Bronx, Police Officer Luis Marte made remarks to § 87(2)(b) based upon her gender.

§ 87(2)(b) testified that she attempted to obtain information from PO Marte regarding § 87(2)(b)'s criminal charges and where he was being taken. She alleged that during this exchange, PO Marte called her a “bitch” three times in total, at least one of which was iterated in the form of “bird bitch”(BR 4).

§ 87(2)(b) alleged that PO Marte called § 87(2)(b) a “bitch” several times. He made this allegation both during his sworn statement and in the initial narrative he provided to IAB (BR 3).

§ 87(2)(b) in an unverified telephone statement, reported that PO Marte called § 87(2)(b) a “dumb bitch” as well as a “bird bitch”(BR 5).

PO Marte testified that § 87(2)(b) cursed at him and accused him of “not doing shit” to assist her in locating her lost car keys. He and § 87(2)(b) had what he described as a heated exchange for five to ten minutes. PO Marte testified that he was tired of repeating himself to her. When asked whether, during their exchange, he called her a “bitch,” PO Marte stated verbatim: “I couldn’t be able to tell you ‘cause we were going back and forth. I’m not sure what I said.” When asked whether he called her a “bird bitch,” PO Marte stated that he could not recall whether he did (BR 6). PO Prieto testified that he did not recall hearing PO Marte call any civilians on scene a “bitch” or a “bird-bitch”(BR 7).

The three civilians consistently alleged that PO Marte called § 87(2)(b) a “bitch” in some form. Two of the three alleged that the remark was made in the form of “bird-bitch,” which is a relatively uncommon construction of the term. PO Marte testified that he could not recall whether or not he used the word “bitch” toward § 87(2)(b) nor could he recall whether he used the highly-specific version of the term, “bird-bitch.” § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

Second, PO Marte had no difficulty providing a full and detailed account of the incident as whole, including several examples of the profane language that § 87(2)(b) and § 87(2)(b) used toward him while on scene. That he was unable to recall his own statements toward § 87(2)(b) and that he did not express any confusion at the term “bird-bitch” when was asked whether he used it and that he failed to deny using it,

§ 87(2)(g)

§ 87(2)(b)

Officers are to be courteous and respectful toward members of the public. NYPD Patrol Guide 203-09 (BR 9). In OATH PD v. Miller 2127/00, the administrative judge found that an officer's use of the word "bitch" constituted misconduct because the term is unnecessarily insulting and does not perform any legitimate law enforcement purpose. OATH PD v. Miller 2127/00 (2000)(BR 9).

§ 87(2)(g)

Allegation C – Discourtesy – In front of 1353 Edward L. Grant Highway in the Bronx, Police Officer Luis Marte spoke discourteously to § 87(2)(b)

§ 87(2)(b) alleged that PO Marte told her to "shut the fuck up" when she expressed her objections to § 87(2)(b)'s arrest and asked where the police were taking him.

Neither § 87(2)(b) nor § 87(2)(b) reported hearing PO Marte make this statement to § 87(2)(b).

As discussed, PO Marte testified could not recall what he said to § 87(2)(b) and did not know whether or not he used profanity toward her. PO Prieto, as discussed, testified that he did not recall hearing PO Marte use any profanity toward anyone and noted that the scene was too chaotic for him to hear the conversation clearly.

§ 87(2)(g)

Allegation D - Abuse of Authority – In front of 1353 Edward L. Grant in the Bronx, Police Officer Luis Marte threatened to arrest § 87(2)(b)

Allegation E – Abuse of Authority – In front of 1353 Edward L. Grant in the Bronx, Police Officer Luis Marte threatened to arrest § 87(2)(b)

It is undisputed that PO Marte threatened § 87(2)(b) with arrest. § 87(2)(b) and § 87(2)(b) both alleged that he did so, and PO Marte acknowledged informing § 87(2)(b) that if she did not leave, she would be arrested along with the other individuals. Although none of the civilians alleged as such, PO Marte additionally acknowledged that he told § 87(2)(b) that she, too, would be arrested if she did not leave. The propriety of his threats, therefore, is the matter in dispute.

§ 87(2)(b) testified that she, § 87(2)(b) and § 87(2)(b) had each consumed one alcoholic drink each at the Budda Lounge and she denied being intoxicated. § 87(2)(b)'s argument with § 87(2)(b)

§ 87(2)(b) was precipitated by derogatory remarks that § 87(2)(b) reportedly made toward § 87(2)(b) while she was walking on the sidewalk toward her parked vehicle. She testified that she asked PO Marte why § 87(2)(b) was being arrested and where the officers would be taking him, and that he replied, “Do you want to get arrested too?” He never told her what she would be arrested for. This exchange occurred directly outside of the police van into which § 87(2)(b) had already been placed. She stated that a crowd of more than ten patrons from the Budda Lounge had gathered to watch the encounter (BR 4).

§ 87(2)(b) testified that he, § 87(2)(b) and § 87(2)(b) had each consumed one to two alcoholic beverages at the Budda Lounge. He testified that, after he was handcuffed and placed in the police van, he remained on scene for about five more minutes. During these minutes, § 87(2)(b) attempted to explain to PO Marte that § 87(2)(b) had been the victim, not the aggressor, of the altercation for which he had been arrested. During their exchange, PO Marte allegedly asked § 87(2)(b) “You want me to arrest you, bitch?” (BR 3).

§ 87(2)(b) provided an unverified telephone statement, and she did not report hearing PO Marte threaten § 87(2)(b) with arrest. As discussed, she testified to witnessing PO Marte and § 87(2)(b) getting into a heated verbal exchange, and § 87(2)(b) therefore pulled § 87(2)(b) back because she did not wish for the situation to escalate (BR 5).

PO Marte testified that after § 87(2)(b) had been handcuffed and placed in the police van, § 87(2)(b) and another woman, identified by the investigation as § 87(2)(b) told PO Marte that they had misplaced their keys. He believed that they were both highly intoxicated. PO Marte stated that he attempted to assist them in locating them by shining his flashlight on the ground and such, but his efforts were unsuccessful. § 87(2)(b) and § 87(2)(b) were still frustrated about their keys, and § 87(2)(b) accused PO Marte of “not doing shit.” By this time, an additional police vehicle had arrived for the purpose of transporting § 87(2)(b) to the stationhouse separately, and PO Marte was now ready to transport § 87(2)(b) to the stationhouse without further delay. At this time, PO Marte told § 87(2)(b) and § 87(2)(b) multiple times, “Either you guys leave or you’re going to get arrested along with them.” PO Marte testified that that each would have been arrested for disorderly conduct due to their refusal to disperse. § 87(2)(b) replied, “Arrest me!” but § 87(2)(b) pulled her back and PO Marte was able to leave the scene safely once she did (BR 6).

PO Prieto did not recall hearing PO Marte tell either woman that if she did not leave, she would be arrested. He testified that § 87(2)(b) and § 87(2)(b) expressed anger that § 87(2)(b) was being arrested and that they were standing close to the police van but he was unable to estimate how close. He never observed them trying to interfere with police action to an arrestable level (BR 7).

A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance, or alarm, or recklessly creating the risk thereof, he or she congregates with others in a public place and refuses lawful orders to disperse. New York State Penal Law 240.20, Subsection 6 (BR 10).

[illegible]

§ 87(2)(b)'s girlfriend, was by all counts a more vocal and participatory player than was § 87(2)(b). It remains in dispute whether the officers actually instructed her to leave, and beyond yelling at him, PO Marte did not report anything she did to active prevent the officers from leaving. This ambiguity is bolstered by PO Prieto's testimony, who stated that did nothing to interfere and that the officers left as soon as the additional police vehicle arrived on scene.

§ 87(2)(g)

Officer Luis Marte threatened § 87(2)(b) with the use of force.

It is undisputed that § 87(2)(b) and PO Marte argued with one another during the drive from 1353 Edward L. Grant Highway to the 44th Precinct stationhouse. The content of that conversation remains in dispute.

§ 87(2)(b) alleged that PO Marte said to him, “When we get to the stationhouse, I’m going to fuck you up.” (BR 3).

PO Marte denied making this statement to § 87(2)(b) and denied making any threats of force toward him. He testified that § 87(2)(b) accused him of being disrespectful and of refusing to help § 87(2)(b) find her keys, and that PO Marte responded by blaming § 87(2)(b) for causing a scene (BR 6). PO Prieto recalled that PO Marte and § 87(2)(b) argued back and forth during the ride to the stationhouse, but did not recall hearing PO Marte tell § 87(2)(b) that he would “fuck him up” at the stationhouse (BR 7).

It is notable that PO Marte denied making this statement to § 87(2)(b) while each of the other verbal allegations pled against him (Allegations A-C) PO Marte testified that he did not recall whether or not he said. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation G – Force – Inside of the 44th Precinct stationhouse, Police Officer Luis Marte used physical force against § 87(2)(b)

It is undisputed that PO Marte and PO Prieto escorted § 87(2)(b) into the 44th Precinct stationhouse and led him directly to an area of individuals back cells where no prisoners were lodged. They did not first present him to the desk officer, but rather walked him to those back cells and, after PO Prieto removed § 87(2)(b)'s handcuffs, a physical altercation ensued between PO Marte and § 87(2)(b). The nature of that altercation and the propriety of PO Marte's conduct therein remains in dispute.

§ 87(2)(b) alleged that he stood with the officers in a hallway outside of the back cells, at which time PO Marte removed § 87(2)(b)'s handcuffs. PO Marte then removed his own police shirt, revealing a vest printed with a "Punisher" graphic. § 87(2)(b) testified that, after his handcuffs were removed, his hands remained at his sides and he remained facing away from the officers. Seconds later, PO Marte tripped § 87(2)(b) to the ground, having said nothing to him. § 87(2)(b) denied ever motioning as if to strike PO Marte. He landed on the ground on the right side of his head, then moved onto his back. PO Marte knelt over him and punched him several times on the right side of his face and forehead with a closed fist. § 87(2)(b) responded by attempting to cover his face with his hands to protect those areas, but did not tuck his hands under his body or prevent PO Marte from handcuffing him. PO Marte's punches lasted fifteen seconds in total. PO Prieto stood nearby and did nothing during the struggle. After it was over, PO Prieto assisted PO Marte in handcuffing § 87(2)(b) at which point the officers walked § 87(2)(b) over to the general holding cell area, where the rest of the prisoners were lodged, and § 87(2)(b) fell asleep (BR 3).

PO Marte testified that he and PO Prieto took § 87(2)(b) to the back cells because § 87(2)(b) was still making combative statements and it is protocol to bring irate prisoners to that area until they calm down. He affirmed that this area is not in view of the general holding cell and that no one else, civilian or officer, was present. He testified that PO Prieto removed § 87(2)(b)'s handcuffs while § 87(2)(b) stood facing away from the officers. Within seconds of PO Prieto removing them, § 87(2)(b) turned around and pushed PO Marte in the chest with two open hands, backward. PO Marte took § 87(2)(b) to the ground by grabbing him around the waist and pulling him downward. He did not know how § 87(2)(b) hit the ground because PO Marte himself fell simultaneously; he affirmed, however, that § 87(2)(b)'s hands were free at the time of his fall, and PO Marte never saw § 87(2)(b)'s head strike the ground or any other surface (BR 6).

Once on the ground, PO Marte attempted to restrain § 87(2)(b)'s hands. He could not recall what his hands were doing, except that they were in motion in some manner. He described the struggle between himself and § 87(2)(b) as "wrestling back and forth." § 87(2)(b) rotated his body in different positions and was ultimately handcuffed while chest down, which took a total of a few minutes. PO Marte's right arm was partially underneath § 87(2)(b)'s body, and he sustained a scratch and bruising to that arm and took a week of medical leave as a result of this incident, but

he did not know how or when during the struggle it was sustained. When asked whether § 87(2)(b) struck PO Marte at any point on the ground, PO Marte stated, “Probably on the ground, I’m not even too cause ‘cause we were going back and forth, so I couldn’t even tell if he was hitting me or not ‘cause we were both on the ground.” PO Marte could not recall whether or not he punched § 87(2)(b). When asked, he stated, “I’m not sure – like I said, we’re roughing on the floor, so I’m trying to use as much force as I can to get his hands, as much as he’s trying to fight me off.” PO Marte acknowledged using “arm bars,” a wrestling technique he was taught at the Police Academy which enables officers to restrain an individual’s arms. Apart from § 87(2)(b)’s initial push and moving his arms around, PO Marte stated that he did not recall § 87(2)(b) doing anything to resist arrest. PO Prieto remained a few feet away and observed the struggle, but was not physically involved in any way. He approached and assisted in handcuffing § 87(2)(b) only after PO Marte had already subdued him and restrained his arms. The officers then brought § 87(2)(b) to the general holding cell. PO Marte affirmed that he was wearing a vest with a “Punisher” graphic on it, which became exposed during the struggle at some point when his shirt ripped (BR 6).

PO Prieto corroborated PO Marte’s statement that PO Prieto was the officer to remove § 87(2)(b)’s handcuffs while they were in the back cell hallway, and he testified that a struggle ensued between PO Marte and § 87(2)(b) which resulted in both parties going to the ground. Beyond this information, PO Prieto was unable to provide details of the incident. He stated that, after removing § 87(2)(b)’s handcuffs, he proceeded to place the handcuffs inside of their case, which is attached to his police belt. § 87(2)(b) was still facing away from the officers at this time. By the time he looked up again, PO Marte and § 87(2)(b) were “already entwined.” He estimated that he was looking down at his police belt for a few seconds, and that during this seconds he neither saw nor heard any sounds which called his attention upward; he looked up simply because he had finished holstering his handcuffs. In describing PO Marte and § 87(2)(b)’s “entwinement,” PO Prieto stated that they were facing one another and making statements to one another. He could not recall what they were each saying, and he could not recall where § 87(2)(b)’s hands were at this time. At no point did PO Prieto observe § 87(2)(b) strike PO Marte or make any motions as if to do so. Though he testified that they struggled physically for less than one minute while they were standing, PO Prieto was unable to describe anything about that struggle (BR 7).

Before PO Prieto could interject, PO Marte took § 87(2)(b) to the ground. He could not recall how PO Marte took him to the ground, or in what position § 87(2)(b) landed on the ground initially. PO Marte landed partially on top of § 87(2)(b) and he struggled with § 87(2)(b) on the ground for an amount of time which PO Prieto could not estimate. His most specific descriptions of the altercation were that § 87(2)(b) was “moving his body around,” and that the struggle was “nothing stagnant,” but that he did not know “if one was moving more than the other.” He did not observe PO Marte punch § 87(2)(b) in the head, face, or anywhere on his body. Beyond attempting to gain control of § 87(2)(b)’s arms, PO Prieto could not recall what, if anything, else PO Marte did in order to restrain § 87(2)(b) (BR 7).

PO Prieto had no physical contact with § 87(2)(b) until PO Marte had successfully restrained one or both of § 87(2)(b)’s arms, at which time PO Prieto approached and assisted in placing PO Prieto’s set of handcuffs on § 87(2)(b). He stated that he was looking for an opportunity to interject during the struggle but that none presented itself, so he merely observed and ensured that

§ 87(2)(b) would not be able to run out of the hallway. No other officers were present. After § 87(2)(b) was handcuffed, the officers placed him in the general holding cell with the other prisoners. PO Prieto never learned from PO Marte what had sparked the altercation with § 87(2)(b) (BR 7).

Sgt. Dunia Palacios, who was assigned to work as the desk officer, testified that it was she who instructed PO Marte to take § 87(2)(b) to the back cells. She did so because § 87(2)(b) was yelling in an irate manner and seemed intoxicated. She stated that she followed PO Marte and PO Prieto to the back cells area to ensure that everything went smoothly. When they reached the cells, one of the officers – Sgt. Palacios could not recall which one – attempted to remove § 87(2)(b)'s handcuffs but he refused to allow the officer to do so. She testified that § 87(2)(b) repeatedly turned his body around and approached one of the officers' faces in a confrontational manner. He yelled and cursed at the officers. After observing this interaction for less than one minute, Sgt. Palacios decided to retrieve her Taser back from the desk area, as she feared that the encounter might escalate. She did not see § 87(2)(b) make physical contact with either of the officers. En route to the desk to retrieve the Taser, Sgt. Palacios heard sounds from the back cells which sounded like a fight. She was around a corner from the back cells by this time and thus had no line of sight into that area, and she could not more specifically articulate the sounds that she heard. She returned to the back cells with her Taser after less than one minute, by which time there was no struggle occurring. § 87(2)(b) was inside of one of the back cells, facing away from her, and the officers were in the process of closing the cell door. She could not recall whether § 87(2)(b) was handcuffed at this time. She did not have a visual of his face and could therefore not address whether or not he was injured. She had no conversation with PO Marte or PO Prieto regarding what had occurred in her absence (BR 8).

§ 87(2)(b)'s arrest photograph shows bruising and redness to the upper right side of his face. He also provided the CCRB with photographs he reportedly took the day of his release from police custody, which show what appears to be the same injury (BR 12).

When asked whether § 87(2)(b) was injured during the incident, PO Marte testified that he did “not really” see any visible injuries on § 87(2)(b) but that both he and § 87(2)(b) were “dinged up” from the struggle. He could not elaborate on the extent of the dings. When the photographs of § 87(2)(b)'s injuries were shown to PO Marte, PO Prieto stated that he did not recognize the injury pictured. He testified that he did not know how such injuries were sustained but that they could have been caused by PO Marte bringing him to the ground and/or at some point while they were on the ground. He reiterated that he did not see § 87(2)(b)'s head strike any objects. PO Prieto also initially stated that he did not recall seeing any injuries on § 87(2)(b) but when he was shown the photographs of § 87(2)(b)'s injuries, he testified that he did remembering seeing those injuries on him. He recalled seeing those injuries when he and PO Marte lodged § 87(2)(b) into the general holding cell. PO Prieto denied seeing anything happen in the back cells which could have resulted in the bruising pictured (BR 6, BR 7).

The New York City Fire Department of New York's Pre-Arrest Screening Form, notes that § 87(2)(b) had abrasions to the right side of his face, and complained of headache (see medical records). § 87(2)(b)

§ 87(2)(b) He told medical personnel that his head injury was sustained when the officer “threw him to the ground and took a fist to his

forehead.” Notations were made regarding ecchymosis (discoloration of the skin caused by bleeding underneath) to the frontal and temporal areas of his right scalp. Swelling to his right temporal area was noted. § 87(2)(b) also reported losing consciousness, falling asleep for three hours in the cell, and a sustained feeling of lightheadedness and nausea. A CT scan of his head and x-rays of his spine were ordered, the results of both were normal (see medical records).

Both PO Prieto and PO Marte testified that they saw no injuries on § 87(2)(b) when they first apprehended him in front of the Budda Lounge. They also each denied observing § 87(2)(b) involved in any physical altercation with any civilians on scene, stating that he was arguing with them and possibly “squaring off” when the officers arrived on scene. § 87(2)(b) § 87(2)(b) the other male who was arrested for fighting along with § 87(2)(b) told IAB investigators during their call-out investigation, that neither he nor § 87(2)(b) had punched one another (BR 11). As such, the investigation determined that § 87(2)(b) did sustain his injuries during his time in police custody.

As discussed, PO Marte could not recall whether or not he punched § 87(2)(b). Apart from detailing how § 87(2)(b) pushed him in the chest, PO Marte was able to recall few details about the struggle that ensued, including what § 87(2)(b) did to resist arrest and how PO Marte succeeded in overpowering him without any assistance from his partner.

PO Prieto’s testimony was even less informative. As he testified to have been looking down during the exact moment at which § 87(2)(b) allegedly pushed his partner, PO Prieto provided no information about the crucial first moments of their altercation. Despite there being ostensibly nothing else upon which to focus his attention (since there was no one else in the vicinity and PO Prieto’s stated role was explicitly *to* observe), PO Prieto could not describe any part of the struggle in detail. This sparseness is suggestive of evasion and diminishes PO Prieto’s credibility; his denial of seeing PO Marte punch § 87(2)(b) given his inability to state what PO Marte *was* doing at any point in the struggle, is of limited value as a denial.

Sgt. Palacios’s testimony is puzzling when considered alongside the other statements. First, PO Marte, PO Prieto, and § 87(2)(b) all agreed that no other officers were present, yet Sgt. Palacios placed herself at the scene. It is plausible that the other parties were each focused on the altercation and simply did not notice the presence of another, uninvolved, officer. Her testimony, however, conflicts sharply with both PO Marte and PO Prieto’s testimony as well with expected prisoner and human behavior. Her statement that § 87(2)(b) continually turned his body around and refused to allow the officers to remove his handcuffs was not mentioned by either of the other officers. Moreover, it is difficult to imagine a prisoner refusing to have his handcuffs removed. Finally, Sgt. Palacios’s statement that she found the officers lodging § 87(2)(b) in the back cells when she returned with the Taser, conflicts with all other parties’ testimony that § 87(2)(b) was never lodged in these cells but was instead taken to the general holding cell after he was re-cuffed. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) reported this allegation consistently in the initial complaint he made at the precinct, the statement he made to IAB Group 54 during their call-out investigation (BR 14), his CCRB sworn

statement, as well as to medical personnel at § 87(2)(b) Hospital. As it was determined that he sustained his head injury while in police custody at some point, the only suggested alternative was that § 87(2)(b)'s injury was caused by hitting his head on the ground. No officer, including PO Marte who suggested it, actually saw this happen. It is also undisputed that § 87(2)(b)'s hands were free during the time of his fall, making it unlikely that he fell directly on his head (hard enough to cause the documented head injury) without breaking his fall with his hands. Based on this information, as well as on PO Marte's inability to recall whether or not he punched § 87(2)(b) and § 87(2)(b)'s consistency throughout his statements that this did occur, the investigation credits § 87(2)(b)'s testimony that PO Marte punched him in the upper right side of his face and forehead.

Officers are to use the minimum force reasonably necessary to effect an arrest. NYPD Patrol Guide 221-02(BR 9).

PO Marte's justification for the force that he did acknowledge using was based on his allegation that § 87(2)(b) pushed him and then continued to resist apprehension while on the ground. § 87(2)(b) denied pushing PO Marte, and PO Prieto was looking elsewhere at the time this alleged push occurred. PO Marte testified that he believed § 87(2)(b) was charged with assaulting an officer on the basis of this altercation, but according to § 87(2)(b)'s arrest report, he was not actually charged with this crime. Based on PO Marte's already diminished credibility, and the conspicuous lack of corroboration of either account by PO Prieto, the investigation found difficulty crediting PO Marte's statement vis a vis the push.

Moreover, in describing the struggle that took place on the ground, PO Marte testified to nothing on § 87(2)(b)'s part which could have justified punches to the head. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Squad: 15

Investigator:	_____	_____	_____
	Signature	Print	Date
Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date